

July 31, 2014

Filed in ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation, GN Docket No. 14-28, *Protecting and Promoting the Open Internet*.

Dear Ms. Dortch:

On Tuesday, July 29, 2014, Writers Guild of America West, Inc. (“WGAW”) Board Member Alfredo Barrios, WGAW Member Issa Rae, WGAW Political Director John Vezina, WGAW Research & Public Policy Director Ellen Stutzman, WGAW Research Analyst Marvin Vargas, Markham Erickson, Steptoe & Johnson LLP, and the undersigned met with FCC Chairman Tom Wheeler, FCC General Counsel Jonathan Sallet, and FCC Special Counsel for External Affairs Gigi Sohn with regard to the above-captioned proceeding.

WGAW members and representatives shared their views on the importance of preserving the current open, nondiscriminatory access to and preservation of the existing low entry barriers of the Internet, which are the essential ingredient for promoting programming excellence, competition, independence, and diversity, and for providing new opportunities for Writers. WGAW pointed out that writers are now benefitting from new competition for their ideas that the open Internet has provided, and that this has resulted in added choice for consumers. We pointed out that Netflix and Amazon are expected to spend close to \$1 billion on original content in 2014, and that more than 200 WGAW members have written original online video programs, and close to 30 original, television-length series are expected to be released online in 2014. These new services, however, must rely on Internet service providers (ISPs) to reach consumers. We pointed out that (1) the largest ISPs already control the multichannel video programming distributor (MVPD) market, (2) they have a vested interest in preventing online video competition from developing and (3) in the past they have demonstrated that they will limit Internet openness to advance their economic interests. As a result, WGAW argued that rules which rely on Title II authority are necessary to protect online competition and innovation and for effective enforcement of the Commission’s Order.

We then discussed those rules we believe must be included in a Final Rule in order to protect the essential features of a Free and Open Internet. First, we said that ISPs should be prohibited from blocking, throttling, or degrading access to legal content, including at

Internet exchange or interconnection points with a terminating access ISP. Second, we argued that ISPs should be flatly prohibited from discriminating in transmitting lawful Internet traffic and that such a non-discrimination rule should address both data cap practices and the designation of “specialized services,” so as to severely limit the practices permitted under either definition.

We next argued that the FCC must use the Rulemaking to prevent the creation of a tiered Internet. We said the Commission should not, as some have suggested, introduce a standard permitting a minimum level of Internet access above which ISPs can negotiate for prioritized service. Such a rule, we said, would invite ISPs to degrade content to a minimum level of their choosing and charge edge providers for better service. We noted that in a non-congested network, there is no need for prioritization and a rule that institutes forms of prioritization could disincentive investments in expanding network capacity. We also stated our opposition to paid prioritization and called for its prohibition. Allowing ISPs to charge for enhanced delivery of content on the Internet would provide an unfair advantage to dominant companies and foreclose opportunities for new entrants to the market. In our view, the development of “fast” and “slow” lanes would immediately create a substantial, perhaps insuperable, new barrier to entry for independent production and for the opportunities for writers that have just recently emerged. We further suggested that the rules should be applied equally to fixed wireline and wireless Internet service and that this was another critical step toward avoiding the development of a “second class” of Internet access.

WGAW next called for extending the proposed rules to address interconnection. ISP peering must be addressed, we suggested, because by charging for peering, an ISP is creating an “access charge” that would otherwise violate a “no blocking” rule if done within the last mile. We suggested that failure to prohibit ISPs from using their terminating access monopoly to extract payments from content providers (or their delivery networks), for Internet traffic that has already been paid for by end users, would enable ISPs to transport otherwise prohibited “discriminatory” conduct from the “last mile” to interconnection points, thereby effectively circumventing the rules.

Finally we urged that the Commission reject the “commercially reasonable” standard and instead adopt *per se* prohibitions and presumptions against paid prioritization. Adopting such prohibitions and presumptions should be done after reclassifying broadband Internet access as a “telecommunications service” under Title II of the Communications Act. Permitting “commercially reasonable” agreements, we argued, would give broadband Internet access providers unlimited price discrimination power, would leave all edge providers, both large and small, at the mercy of the large ISPs, and would make effective enforcement of the Order impossible. We expressed our concern that the “commercially reasonable” standard is not well established and are unsure of its ability to protect the broader goals of civic engagement and free speech outlined in the NPRM.

At the conclusion of the meeting, WGAW provided the Commissioner with a policy paper on the issue and a copy of a letter supporting the Open Internet from over 240 Showrunners who are WGAW members, copies of which are attached.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 251-4264.

Respectfully submitted,

/s/ Michael A Forscey
Michael A Forscey
FORSCEY PLLC
COUNSEL FOR WGAW, INC.

cc: Gigi Sohn
Jonathan Sallet



**WRITERS
GUILD OF
AMERICA, WEST**

WGAW Open Internet Position

WGAW Supports a Free and Open Internet

As the Internet has become the modern town square, nondiscriminatory access to diverse and independent news, information and entertainment online is necessary for free speech, competition and democratic discourse. The low entry barriers of the open Internet have spurred innovation and competition across many industries. Writers are now benefitting from new competitors for their ideas, resulting in added choice for consumers. Netflix and Amazon are expected to spend close to \$1 billion on original content in 2014.¹ More than 200 WGAW members have written original online video programs and close to 30 original, television-length series are expected to be released online in 2014. These new services, however, must rely on Internet service providers (ISPs) to reach consumers. The largest ISPs also control the multichannel video programming distributor (MVPD) market and have a vested interest in preventing online video competition from developing. ISPs have demonstrated that they will limit Internet openness to advance their economic interests. Strong Open Internet rules that rely on Title II authority are, therefore, necessary to protect online competition and the virtuous cycle of innovation.

Essential Rules to Protect the Open Internet

- ✓ **No Blocking:** ISPs should be prohibited from blocking, throttling, or degrading access to legal content including at Internet exchange or interconnection points.
- ✓ **No Unreasonable Discrimination:** ISPs should be prohibited from engaging in unreasonable discrimination in transmitting lawful Internet traffic. A rule banning unreasonable discrimination should address data cap practices and the designation of “specialized services,” both of which may constitute discrimination.
- ✓ **Prevent the creation of a tiered Internet:** The FCC should not introduce a standard for a minimum level of Internet access above which ISPs can negotiate to provide prioritized service. Such a rule would permit ISPs to degrade content to a certain minimum level and charge edge providers for better service, creating “fast” and “slow” lanes for content.
- ✓ **Prohibit paid prioritization:** Allowing ISPs to charge for enhanced delivery of content on the Internet would provide an unfair advantage to dominant companies and foreclose opportunities for new entrants to the market.
- ✓ **Reject a “commercially reasonable” standard:** Permitting “commercially reasonable” agreements would give broadband Internet access providers the ability to discriminate

¹ Samantha Bookman, “A closer look at the billions of dollars Netflix, Amazon and Hulu are spending on original content,” *FierceOnlineVideo*, June 4, 2014, <http://www.fierceonlinevideo.com/special-reports/closer-look-billions-dollars-netflix-amazon-and-hulu-are-spending-original>.

between edge providers and allow them to favor their own content, or the content of preferred partners, to the detriment of others.

- ✓ Require enhanced disclosure of performance and network management practices: ISPs must be required to disclose information regarding price, network performance, data usage policies and network management practices. Transparency will promote competition and will prevent ISPs from using network management practices unfairly to enhance or degrade access to particular content.

Scope of Rules

- Apply rules to both fixed and wireless Internet access services: There should not be a second class of Internet access, where consumers are not guaranteed the right to access the lawful content, services and applications of their choice. According to Pew Research, 10% of Americans have a smartphone but no home broadband connection.² Net Neutrality rules should be applied equally to wireline and wireless Internet.
- Extend rules to address interconnection: ISP peering is a net neutrality issue because by charging for peering, an ISP is creating a superior, paid lane into its network. The Commission should prohibit ISPs from using their terminating access monopoly to extract payments from content providers, or their delivery networks, for Internet traffic that has already been paid for by ISP subscribers. If the Commission's revised rules do not address interconnection, ISPs will be able to move discrimination from the "last mile" network to interconnection points, effectively circumventing the rules.

Legal Authority for Open Internet Rules

The FCC should reclassify broadband Internet access as a Title II telecommunications service because it provides the most straight-forward and legally sound path to protect the open Internet. Such action would provide the Commission with authority to prohibit unreasonable discrimination and to identify broadband practices that are *per se* unreasonable.

Who We Are

Writers Guild of America, West is a labor union representing more than 8,000 writers of motion pictures, television, radio and Internet programming, including news and documentaries. WGAW members are responsible for most of the entertainment content shown on American television, the Internet and in theaters. For more information on the WGAW, please visit: www.wga.org.

² Pew Research, "Home Broadband 2013," August 26, 2013, <http://www.pewinternet.org/2013/08/26/home-broadband-2013/>.



May 13, 2014

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Wheeler:

We are writing to express our strong support for an open Internet. We are showrunners and creators of television and original Internet programs, and members of the Writers Guild of America, West.

The open Internet is the greatest technological catalyst to participatory democracy and free speech since the printing press. That's why totalitarian states around the world try to control it.

There are two basic directions that the Internet can go, and the choice is in the FCC's hands.

Currently, the open Internet works like the phone lines. Consumers can call whomever they want; nobody gets to limit who they can call. Likewise, consumers choose where they want to go on the Internet; no content can be given preferential treatment by their Internet provider.

If Net Neutrality is neutered, the Internet will become like cable television. A few corporate gatekeepers such as Comcast will be allowed to decide what content consumers can access and on what terms. The danger is that blocking, discrimination and paid prioritization could occur.

This puts decision making and power over the Internet in the hands of the few, especially those with money. The Internet is too vital to the free exchange of ideas to allow the few companies who control Internet technology to edit the ideas and content that flow through it.

Moreover, in this case what's bad for free speech and democracy is also bad economic policy. Economists across the political spectrum agree that when companies can construct barriers to entry, markets are not free and efficient. New competition is locked out, resulting in a form of monopoly that causes consumers to suffer from higher prices- like their cable bills- and fewer choices.

That is exactly what has occurred in our traditional film and television business. After decades of consolidation and mergers, seven corporations control 95% of television production and viewing.

But right now the Internet is opening up the media business to new competition. There are new buyers for what we as writers create. But if this new competition is unfairly pushed aside because the FCC adopts weak rules, *rather than allowing consumers to decide what they prefer*, neither innovation nor the best interests of society will be served.

An open Internet is essential for free speech and participatory democracy. An open Internet has also been a tremendous engine for the generation of new jobs and businesses, an engine that properly rewards creators who have something compelling to say.

The Commission has the authority to keep the Internet free and open. We urge you to take the steps necessary to ensure the free flow of ideas and content across the web, without the threat of blocking or discrimination.

Sincerely,

Courtney Kemp Agboh
Mara Akil
Chris Alberghini
Adam Armus
Jeffrey Astrof
Neal Baer
Hunt Baldwin
Carol Barbee
Mike Barker
Jay Beattie
John D. Beck
Jeffrey Bell
Roberto Benabib
Dan Berendsen
Amy Berg
Jim Bernstein
Jennifer Bicks
Kevin Biegel
Ken Biller
Steve Blackman
April Blair
Raphael Bob-Waksberg
Rob Bragin
Christopher Brancato
Bradley Bredeweg
Shane Brennan
Scott Buck
Jack Burditt

Steve Callaghan
Bill Callahan
Clifton Campbell
Dave Caplan
Glenn Gordon Caron
Bridget Carpenter
Patti Carr
Jeremy Carver
Daniel Cerone
Ilene Chaiken
Adam Chase
Mike Chessler
Cynthia Cidre
David X. Cohen
Carter Covington
Elizabeth Craft
Alexandra Cunningham
Carlton Cuse
Ed Decter
Steven DeKnight
Bill D'Elia
Robert Doherty
Garrett Donovan
Chris Downey
Tim Doyle
James Duff
Jay Duplass
Pamela Eells

Charles H. Eglee
Lee Eisenberg
John Eisendrath
Diane English
Dave Erickson
Stephen Falk
Kevin Falls
Mark Fergus
Dave Finkel
Mickey Fisher
Emily Fox
Dana Fox
Victor Fresco
Bryan Fuller
Sera Gamble
Alexander Gansa
Greg Garcia
Leila Gerstein
Mike Gibbons
Vince Gilligan
Scott Gimple
Sivert Glarum
Neil Goldman
Sara Goodman
David A. Goodman
Howard Gordon
Al Gough
Peter Gould

David S. Goyer
Susannah Grant
Rob Greenberg
Lyn Greene
David Greenwalt
Jonathan Groff
Marc Guggenheim
Aaron Guzikowski
Aaron Harberts
Chris Harris
Ron Hart
DeAnn Heline
Felicia D. Henderson
Tom Hertz
Al Higgins
Jody Hill
Tod Himmel
David Hoge
David Holden
Soo Hugh
Armando Iannucci
Lauren Iungerich
Sean Jablonski
Michael Jamin
Al Jean
Joanna Johnson
Jennifer Johnson
Dee Johnson
Jeff Judah
Tom Kapinos
Michael B. Kaplan
Jason Katims
Mitchel Katlin
Mike Kelley
Neal Kendall
Jack Kenny
Chris Keyser
Nahnatchka Khan
Callie Khouri
Kyle Killen
Marlene King

Daniel Knauf
Jay Kogen
Aaron Korsh
Eric Kripke
Liz Kruger
Sam Laybourne
Joni Lefkowitz
Jennifer Levin
Richard Levine
Steven Levitan
Paul Lieberstein
Eric Lodol
Chuck Lorre
Rob Lotterstein
Steven Maeda
David Manson
Jim Margolis
Michael Mariano
Andrew W. Marlowe
Glen Mazzara
Blake McCormick
David McFadzean
Brian McGreevy
Matthew McGuinness
Jamie McLaughlin
Jeff Melvoin
Carol Mendelsohn
Erica Messer
Rina Mimoun
Ronald D. Moore
Chris Mundy
Christopher Murphey
Kevin Murphy
Margaret Nagle
DJ Nash
Jan Nash
Stephen Nathan
Peter Nowalk
Rockne S. O'Bannon
Peter Ocko
Peter O'Fallon

Lara Olsen
Peter Paige
Lennon Parham
James Parriott
Jonas Pate
Jim Patterson
Robert Peacock
Tony Phelan
Judd Pillot
Jeff Pinkner
Greg Plageman
Cameron Porsandeh
Bill Prady
Dawn Prestwich
Matt Pyken
Daniel Pyne
Luvh Rakhe
Andrew Reich
Ethan Reiff
Lukas Reiter
Shonda Rhimes
Jason Richman
Scott Rosenbaum
Melissa Rosenberg
Mike Royce
Kirk Rudell
Shawn Ryan
Ajay Sahgal
Nick Santora
Scott Satin
Karl Schaefer
Patrick Schumacker
Andy Schwartz
Mike Scully
Heath Seifert
Michael Seitzman
Naren Shankar
Craig Shapiro
Dan Signer
Josh Silverstein
Craig Silverstein

Todd Slavkin
Patrick Sean Smith
Jill Soloway
Holly Sorensen
Tom Spezialy
Kathryn J. Steinberg
Dan Sterling
Bernie Su
Veena Sud
Craig Sweeny
Darren Swimmer
Tom Szentgyorgyi
Janet Tamaro

Matt Tarses
Christian Taylor
Betsy Thomas
Rob Thomas
Hans Tobeason
Donald Todd
Cyrus Voris
Greg Walker
Matthew Weiner
Lizzy Weiss
Matt Weitzman
John Wells
Mark Wilding

Vaun Wilmott
Hilary Winston
John Wirth
Nicholas Wootton
Craig Wright
Rob Wright
Nicole Yorkin
Graham Yost
David Zabel
Aaron Zelman
Ed Zuckerman
David Zuckerman